

*Opinion*  
*No. 1170 A*

*Opinion Book*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

ESTATE OF OSCAR L. MILMORE, )  
Deceased, )  
THOMAS H. REYNOLDS, Executor )  
Petitioner, )  
v. )  
DISTRICT OF COLUMBIA, )  
Respondent. )

RECEIVED

MAR 05 1981

SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
TAX DIVISION

Docket No. 2608 MAR 23 1981

FILED

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came before the Court for oral argument on March 3, 1981 upon Petitioner's Motion for Summary Judgment and Respondent's Cross-Motion for Summary Judgment. Upon consideration of those motions, the parties' memoranda of points and authorities and statements of material facts as to which there is no genuine issue and other documents submitted with the motions, and the argument of counsel, the Court makes the following

FINDINGS OF FACT

1. Oscar L. Milmore ("Milmore") died on March 31, 1972. Milmore was then a resident of the District of Columbia.
2. Prior to Milmore's death, he created a revocable trust (the "Trust") by an instrument dated February 15, 1954. Thereafter, Milmore amended the Trust by six separate documents dated, respectively, October 26, 1955, June 30, 1958, October 6, 1962, January 28, 1963, September 2, 1971 and December 17, 1971. All of these documents have been filed with the Court in this case and agreed by the parties to be authentic.
3. After Milmore's death, the beneficiaries of the Trust agreed to amend the Trust by an instrument dated December 28, 1972 in order that a unitrust created in the prior Trust documents would qualify in all respects under the applicable

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3. After Milmore's death, the beneficiaries of the Trust agreed to amend the Trust by an instrument dated December 28, 1972 in order that a unitrust created in the prior Trust documents would qualify in all respects under the applicable

provisions of the Internal Revenue Code. Such amendments were specifically permitted by D.C. Code § 21-1501. An authentic copy of that amendment has been filed with the Court.

4. By the Amendment executed on September 21, 1971 (the "Fifth Amendment") Milmore established a \$400,000 charitable remainder unitrust which would pay income to life to one Patricia Lynn Gray ("Gray") with the remainder to be distributed to a charitable beneficiary known as "The Pepita Milmore Memorial Fund" (the "Fund"). In addition, the balance of the Trust remaining after certain specific legacies and the unitrust (the "Residuary Balance") would be immediately distributed to the Fund.

5. Three months later, Milmore executed an additional Amendment to his Trust dated December 17, 1971 (the "Sixth Amendment"). The Sixth Amendment revoked the provisions for the immediate distribution of the Residuary Balance to the Fund purported instead to divide it into three shares, all payable to non-charitable beneficiaries. Therefore, under the terms of the Sixth Amendment, the entire value of the Residuary Balance would ordinarily be subject to inheritance tax since it was to be distributed to non-charitable beneficiaries.

6. Milmore died without again changing the trust instruments, and the Executors of Milmore's estate filed an inheritance tax return requiring the payment of inheritance taxes of \$100,535.19, plus interest of \$502.67. The Respondent assessed the tax and interest in accordance with the return, and the assessment was paid by Petitioner on or about January 30, 1973.

7. On December 21, 1972 one of the Trustees of the Trust, American Security & Trust Co., commenced a civil action in the United States District Court for the District of Columbia, American Security & Trust Co. v. National Gallery of Art, et al., Civil Action No. 2526-72, seeking, inter alia, a declaratory

judgment and instructions as to the validity of the Sixth Amendment. The litigation was vigorously contested by the parties and, on May 27, 1975, United States District Court Judge Thomas A. Flannery entered a Final Judgment, consented to by the parties, which upheld the validity of the Trust as amended by all amendments other than the Sixth Amendment and reformed certain provisions of the Trust as so amended. An authentic copy of the Final Judgment has been filed with and reviewed by this Court.

8. (a) As a result of the Final Judgment's reformation of the Trust, the unitrust established in the Fifth Amendment which had provided a life income interest for Gray with the remainder to the Fund was increased from \$400,000 to \$450,000 and the Residuary Balance (which, if the Sixth Amendment had been found valid, would have been divided solely among the non-charitable beneficiaries) was instead to be divided into three shares as follows:

(i) Share A, which was further divided into Shares D and E. Share D constituted two-ninths ( $2/9$ ) of the Residuary Balance and Share E one-ninth ( $1/9$ ) thereof. Share D was established as an additional unitrust for Gray with the remainder to be distributed to the Fund. Share E created life income and remainder interests for non-charitable beneficiaries.

(ii) Share B constituted one-third ( $1/3$ ) of the Residuary Balance and was established as a unitrust for a non-charitable beneficiary with the remainder interest therein to the Fund.

(iii) Share C was also one-third ( $1/3$ ) of the Residuary Balance and it provided life income and remainder interests for non-charitable beneficiaries.

(b) Thus, pursuant to the Final Judgment, the Gray unitrust was increased by \$50,000 (thereby increasing the value of the Fund's remainder interest therein) and, in addition, the

Fund had a remainder interest with respect to five-ninths (5/9) of the Residuary Balance (i.e. Share D and Share B).

9. Petitioner timely filed an amended Inheritance Tax Return reflecting inheritance tax due of \$61,344.70, which is \$39,190.49 less than tax which had previously been paid by Petitioner. Petitioner therefore claimed a refund in that amount.

10. On April 19, 1978 Respondent denied the refund request in a one sentence letter stating that "In view of the fact that the Final Judgment of the United States District Court in Civil Action 2526-72 was based on an agreement between the parties concerning the issues involved, we must deny your claim for a refund of a portion of the District of Columbia inheritance taxes paid for the above estate."

11. Petitioner then timely filed this action for its refund, plus interest thereon. Petitioner's Motion for Summary Judgment was supported by a Statement of Material Facts As To Which There Is No Genuine Issue, and Respondent conceded the truth of the facts set forth therein.

12. The refund sought by Petitioner involves inheritance tax paid in 1973 with regard to property which, as a result of the Final Judgment entered by Judge Flannery in the United States District Court suit, was to be distributed to a charitable beneficiary: the Fund. This fact is not disputed by Respondent, but Respondent claims, in effect, that since the Final Judgment entered by Judge Flannery was consented to by all the parties it should not be given effect.

Based upon the foregoing, the Court makes the following

CONCLUSIONS OF LAW

1. The Court finds as a matter of law that D.C. Code § 47-1601(e) (1973 ed.) expressly provides that all charitable beneficiaries are "exempt from any and all taxation".

2. The Court further finds that, as a matter of law, the other provisions of the inheritance tax statutes assess the tax based upon the identity of the actual distributee of property. Thus, for example, D.C. Code § 47-1605 (1973 ed.) refers to the personal representative's right to collect the requisite tax from the distributive share of "each beneficiary entitled to a distributive share or legacy". (Emphasis added.) Similarly, D.C. Code § 47-1606 refers to the payment of the tax on behalf of "every person entitled to receive property taxable under Section 47-1601". (Emphasis added.)

3. Here, however, the Respondent wishes to avoid the refund by reference to the non-charitable beneficiaries who would have received interests in decedent's property, if the Sixth Amendment was valid, but who, by virtue of the Final Judgment, are no longer entitled to receive, and will not actually receive, those distributions. In the Court's view there is no warrant in the inheritance statutes for refusing to refund the amounts paid in regard to property which a charitable beneficiary will receive by virtue of a Final Judgment. The result urged by Respondent would require this Court to ignore the clear mandate of the inheritance tax statutes and the Final Judgment entered by Judge Flannery, and to approve the Respondent's assessment of inheritance tax on the basis of a document -- the Sixth Amendment --which was not found to be valid by the United States District Court.

4. In addition, although no case precisely on point has been found by either of the parties or by this Court, it is clear that our courts have interpreted the inheritance tax statutes so as to avoid imposition of the inheritance tax upon distributions not actually to be received by a distributee. See District of Columbia v. Payne, 126 U.S. App. D.C. 47, 374 F.2d

261, 264 (19     ; Hyman v. District of Columbia, 101 U.S. App. D.C. 179, 245, F.2d 585, 587 (1957). Here, however, as has been previously noted, by refusing Petitioner's timely request for a refund, Respondent effectively imposes inheritance tax on property which will not actually be distributed to the non-charitable beneficiaries but will, pursuant to the Final Judgment, be distributed to the Fund. Not only does this result seem contrary to the cases cited, but it is also contrary to this jurisdiction's clear public policy favoring charities. See, e.g., National Savings and Trust Company v. Sarolea, 269 F. Supp. 4, 7 (D.D.C. 1967).


5. Finally, it is noteworthy that Respondent's papers do not dispute what seems to be the clear import of the statutes, cases, and this jurisdiction's public policy. Rather, Respondent relies upon certain of its regulations dealing with will contests and renunciations. Respondent relies particularly on 16 D.C.C.R. §§ 407.1 and 407.4. Section 407.1 deals with will contest cases which are compromised by agreements whereby the Will is permitted to take effect. Section 407.4 deals with renunciations by a legatee under a will. It seems to the Court clear that these regulations apply to wills and not to trust agreements. Furthermore, even if there was some basis to apply these regulations by analogy to the Trust involved here (and the Court finds none), the Court notes that the regulations could not require a result (i.e. imposition of tax with respect to property which the charitable beneficiary is entitled to receive) which the inheritance tax statutes clearly forbid, as the Court has already concluded. Moreover, assuming arguendo that it was somehow appropriate to make such an analogy, the Court believes that Regulations Section 407.3 (dealing with the construction of a will by a Court) and Section 407.2 (dealing with the withdrawal of a will by agreement of the parties) are more

analogous to the facts here than are Sections 407.1 and 407.4.  
In this case, both Sections 407.2 and 407.3 would seem to require a refund to the Petitioner.

6. For all the foregoing reasons, the Court finds that there are no material facts genuinely in issue and that Petitioner is entitled to judgment as a matter of law, and, accordingly, Petitioner's Motion for Summary Judgment shall be, and it hereby is, granted and Respondent's Cross-Motion for Summary Judgment, shall be, and it hereby is, denied.

JUDGMENT

THEREFORE, it is this 20<sup>th</sup> day of March, 1981 ORDERED that JUDGMENT shall be, and it hereby is, entered for Petitioner, Estate of Oscar L. Milmore, and against Respondent, District of Columbia, in the amount of \$39,190.49, plus interest thereon at the rate of four percent (4%) per annum from December 29, 1975, the date of filing of the claim for refund to the date of the making of the refund, pursuant to Section 47-2413(c).

  
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John J. Montieroy, Judge  
Superior Court of the District  
of Columbia

Copies were mailed this \_\_\_\_ day of \_\_\_\_\_, 1981 to:

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